

**DISTRICT OF COLUMBIA
DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS**

NOTICE OF PROPOSED RULEMAKING

The Commissioner of the Department of Banking and Financial Institutions, pursuant to the authority set forth in Mayor's Order 2002-80, dated May 3, 2002, and Section 401 of the Home Loan Protection Emergency Act of 2002, effective March 1, 2002 (D.C. Act 14-295)("Act"), hereby gives notice of her intent to adopt the following amendment to Title 26A DCMR, "Banking and Financial Institutions" to add a new chapter, "Chapter 20 Predatory Lending" in not less than thirty (30) days from the date of the publication of this notice in the District of Columbia Register to establish rules for the Act.

CHAPTER 20

PREDATORY LENDING

2000 SCOPE

2000.1 Unless specified otherwise, these rules shall govern the brokering, arranging, making, funding, and servicing of covered loans and predatory lending protections in the District of Columbia, as governed by the Act.

2001 COVERED LOANS

2001.1 A lender that makes a covered loan, as defined under section 101(7)(A) of the Act, shall be subject to Title II of the Act and shall remain subject to Title II of the Act in the event the covered loan is sold or assigned to another person.

2001.2 The purchase or assignment of a covered loan, as defined under section 101(7)(A) of the Act, by a federally-regulated lender shall not relieve the originating lender, or previous purchaser or assignee, if any, of any liability with respect to a violation of the Act.

2001.3 A federally regulated lender that purchases a mortgage loan that was a covered loan under section 101(7)(A) of the Act at the time of origination, shall be subject to section 102 of the Act with respect to the purchased mortgage loan and the mortgage loan shall be a covered loan, as defined under section 101(7)(B) of the Act.

2001.4 A covered loan, as defined under section 101(7)(A) of the Act, that is purchased by a federally regulated lender and subsequently sold or assigned to a person other than a federally regulated lender, shall be a covered loan, as defined under section 101(7)(A) of the Act, with respect to the purchaser or assignee.

2001.5 A covered loan, as defined under section 101(7)(B) of the Act, that is sold or assigned to a person other than a federally regulated lender, shall be a covered loan, as defined under section 101(7)(A) of the Act, with respect to the purchaser or assignee, and the purchaser or assignee shall be subject to Title II of the Act.

2002 MEDIAN FAMILY INCOME

2002.1 For purposes of the Act, the median family income amount for Washington, D.C. shall be the most recent estimate from the Office of Policy and Research Development of the U.S. Department of Housing and Urban Development.

2002.2 The median family income amount for Washington, D.C. can be obtained from the U.S. Department of Housing and Urban Development website (www.huduser.org/datasets/il.html).

2002.3 The following provides an example for calculating 120% of the median family income amount. It requires multiplying the borrower(s)'s income by 1.20. For example, if the income of the borrower(s) is \$50,000, 120% of \$50,000 is calculated as follows: $\$50,000 \times 1.20 = \$60,000$. Thus, 120% of the borrower(s)'s income in the example would be \$60,000. The Fiscal Year 2002 median family income estimate for the District of Columbia, as determined by §§ 2002.1 and 2002.2 is \$64,100. Because 120% of the borrower(s) income is lesser than the median family income estimate for the District of Columbia (\$64,100), the requirements of section 202(a) of the Act concerning insufficient repayment ability would apply to the borrower(s).

2002.4 The Department shall periodically make the most recent median family income amount for Washington, D.C., as set forth in §§ 2002.1 and 2002.2, available on the Department's website (www.dbfi.dc.gov).

2003 NO ENCOURAGEMENT OF DEFAULT

2003.1 No lender shall encourage or recommend that a borrower default on an existing loan or other debt.

2003.2 For purposes of § 2003.1, "default" shall include failure to make any payment when due, without relying on a grace period or late payment period, or failure to perform all the terms and conditions of such existing loan or other debt.

2003.3 A lender shall not encourage or recommend any action by the borrower on existing loans or other debt that will create a default on an existing loan or other debt of the borrower.

2004 LIST OF HOME IMPROVEMENT CONTRACTORS

- 2004.1 For purposes of the Act, a list of home improvement contractors that are bonded and in good standing shall be available from the Department.

2005 RED FLAG WARNING DISCLOSURE NOTICE

- 2005.1 The “Red Flag” Warning Disclosure Notice (“Notice”), attached in the Appendix, Form 1, shall be used to comply with the notice requirement established in section 211 of the Act and may be used to comply with section 219 of the Act.
- 2005.2 The requirement of sending the Notice shall be satisfied if a mortgage broker or mortgage lender sends the disclosure notice to the borrower(s), whether or not it is sent on behalf of a specific lender.
- 2005.3 The delivery of the Notice shall be made by any means in which the Notice is received by the borrower(s), including but not limited to, personal delivery, facsimile delivery, delivery in electronic format, or regular, certified or registered U.S. Mail with postage prepaid and a return receipt for certified or registered U.S. Mail. Unless the lender has been requested to send the disclosure notice to a different address by the borrower, the Notice shall be sent to the borrower(s)’s address or facsimile number as listed on the loan application.
- 2005.4 The lender shall have the burden of proving that the borrower(s) received the Notice.
- 2005.5 The signature of the borrower on the signature line of the Notice shall be deemed to be sufficient confirmation of the borrower’s receipt of the Notice.

2006 MAYOR’S STANDARD FOR ARBITRATION

- 2006.1 For purposes of this Act, the standard for arbitration shall be policies and procedures of the American Arbitration Association.
- 2006.2 Arbitration clauses that comply with policies and procedures of the American Arbitration Association and § 2006.3 shall be presumed not to be oppressive and not to violate section 218 of the Act.
- 2006.3 Persons using arbitration with respect to a covered loan shall, where applicable, comply with the procedures established in D.C. Official Code, §16-4301 et seq.

2007 FILING REQUIREMENTS AND PROCEDURES WITH THE DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS

- 2007.1 Within 14 days after the funding of a covered loan, as defined under section 101(7)(A) of the Act, a lender shall submit copies of the settlement statement, the

FP-7 Form filed with the Office of the Recorder of Deeds, the final Truth in Lending Act disclosure, and the note to the Department.

- 2007.2 In addition to the documents described in § 2007.1, the lender shall submit a letter of transmittal in a form similar to, and containing the same information, as the sample letter of transmittal found in the Appendix, Form 2 to the Department.
- 2007.3 The letter of transmittal shall also contain a certification by the lender that the documents submitted pursuant to § 2007.1 are true copies of the original documents.
- 2007.4 The lender shall deliver the transmittal letter and loan documents package to: The Department of Banking and Financial Institutions, 1400 L Street, N.W., Suite 400, Washington, D.C. 20005.
- 2007.5 Pursuant to D.C. Official Code, §26-1109, the lender shall retain copies of the note, settlement statement, truth-in-lending disclosure, and such other papers or records relating to the loan for at least 3 years after final payment is made on any mortgage loan or after the mortgage loan is sold, whichever comes first.

2008 INVESTIGATIONS

- 2008.1 The Commissioner may initiate an investigation of any person or entity if the Commissioner has reasonable cause to believe that the person or entity has engaged, is engaging, or may engage in one or more of the prohibited predatory lending activities as defined in section 102 or Title II of the Act.
- 2008.2 All investigations shall be conducted in conformity with the requirements of D.C. Official Code, §26-702.01 and D.C. Official Code, § 26-551.12.

2009 ENFORCEMENT

- 2009.1 Pursuant to section 302 of the Act, the Department may conduct examinations, initiate investigations, and issue orders pursuant to section 303 of the Act in order to enforce the provisions of the Act.
- 2009.2 Any findings by the Commissioner of violations shall also be referred to the District of Columbia Office of the Corporation Counsel for further enforcement.

2010 PUBLICATION OF FINAL DECISIONS

- 2010.1 A decision of the Department under D.C. Official Code, §2-501 et seq. shall be enforceable in a court of competent jurisdiction.
- 2010.2 Final decisions shall be published in the District of Columbia Register by the Department within 60 days after the effective date of the final decision.

2011 NOTICE OF ASSIGNEE LIABILITY

2011.1 Any person who sells or assigns a covered loan shall include, with the covered loan a notice, in a form similar to, and containing the same information, as the sample notice found in the Appendix, Form 3.

2099 DEFINITIONS

2099.1 For the purpose of this chapter, the following terms have the meaning ascribed in this section:

“Act” means D.C. Act 14-295, the Home Loan Protection Emergency Act of 2002.

“Department” means the Department of Banking and Financial Institutions.

“District” means the District of Columbia.

“Federally regulated lender” means a lender regulated and supervised by a supervising federal agency, as defined by section 101(26) of the Act, and the Federal National Mortgage Association, or the Federal Home Loan Corporation.

APPENDIX

FORM 1-“RED FLAG” WARNING DISCLOSURE NOTICE

FORM 2-SAMPLE LETTER OF TRANSMITTAL

FORM 3-NOTICE OF COVERED LOAN

FORM 1

“RED FLAG” WARNING DISCLOSURE NOTICE

This notice concerns your application for a loan to be secured by your home. **Your mortgage broker or lender should provide this notice to you at least 3 days before the closing of your loan.**

You should fully understand the information in this form before you close on your loan or sign any loan documents or agreements. This form will assist you in determining whether your mortgage broker or lender may be engaging in predatory lending practices in violation of District of Columbia law and provide you with information regarding mortgage loans and housing counseling.

REMEMBER:

- **A MORTGAGE GIVES A LENDER THE RIGHT TO FORECLOSE ON YOUR HOME!**
- **IF YOU CANNOT OR DO NOT PAY THE MONTHLY MORTGAGE PAYMENTS ON TIME, YOUR HOME CAN BE SOLD AND YOU COULD LOSE YOUR EQUITY IN YOUR HOME AND BE EVICTED!**

If you answer yes to one or more of the following questions, your lender may be engaging in predatory lending practices in violation of the District of Columbia Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295).

Please note: This list is not exclusive and does not contain all the possible lending abuses and violations that may occur. The District of Columbia Department (“Department”) highly recommends that you seek assistance or advice from a housing counselor, your attorney, accountant or financial advisor **before** you sign any loan agreement. A list of housing counseling agencies is available from the Department’s website which can be found at www.dbfi@dc.gov, or from the Department at 1400 L Street, N.W., Suite 400, Washington, D.C. 20005

1. **Red Flag Warning 1: Unaffordable Loan.** Will you spend 50% or more of your gross monthly income for the new monthly mortgage payment or be unable to make the monthly payments on your new loan on a timely basis? ***If your answer is yes, your lender may be making a loan to you that you are unable to afford.***

2(a). **Red Flag Warning 2(a): Financed Credit Insurance.** Have you purchased single-premium credit life, accident, health, or unemployment insurance with your new loan and is the single-

premium credit insurance being financed through your loan? ***If your answer is yes, your lender may be engaging in a predatory lending activity.***

2(b). Red Flag Warning 2(b): Disclosure Requirement. Have you purchased credit insurance on a basis other than a prepaid single premium basis and have you failed to receive a clear and conspicuous disclosure at least 3 days before the closing of your loan that states that the credit insurance is not a condition of the mortgage loan and that you may elect not to purchase the insurance? ***If your answer is yes, your lender may be engaging in a predatory lending activity.***

2(c). Red Flag Warning 2(c): Insurance, Debt Cancellation, or Suspension Services. Have you purchased any insurance, debt cancellation, or suspension services and failed to receive a disclosure notice regarding the insurance, debt cancellation, or suspension services? ***If your answer is yes, your lender may be engaging in a predatory lending activity.***

3. Red Flag Warning 3: Repeated Refinancings. Have you refinanced your home more than once in the last 18 months and your lender is financing points from your previous loan and other fees in your new loan in excess of \$400 or 3% of the new loan principal? ***If your answer is yes, your lender may be engaging in repeated refinancings or “flipping” of your home in violation of the law.***

4. Red Flag Warning 4: Encouraging Nonpayment. Have you been informed by your lender or broker that, because you are refinancing, you should not continue to pay on your existing loan? ***If your answer is yes, your lender or broker may be encouraging you to default on your existing loan in anticipation of refinancing in violation of the law.***

5. Red Flag Warning 5: Unfair Steering. Do you have a new loan with an annual percentage rate greater than the rate you think you would otherwise have qualified for or did your lender or broker make a false, deceptive, or misleading statement regarding your ability to qualify for any mortgage loan based upon your credit score? ***If your answer is yes, your lender may be using your credit scores inaccurately or improperly in violation of the law.***

6. Red Flag Warning 6: Failure To Report Good Payment History. Was your favorable payment history and information **not** reported to a nationally recognized credit reporting agency for a period of more than 12 months? ***If your answer is yes, your lender could be failing to report your favorable credit history and may be in violation of the law.***

7(a). Red Flag Warning 7(a): Home Improvement Contracts. Will a home improvement contractor be paid from the proceeds of your loan without your approval or consent? ***If your answer is yes, your lender may be paying a home improvement contractor in violation of the law.***

7(b). Red Flag Warning 7(b): Bonded and Licensed Home Improvement Contractors. Is the home improvement contractor working on your home not licensed with the District of Columbia Government? ***If your answer is yes, your lender or broker may be working with an unlicensed home improvement contractor in violation of the law.***

8. Red Flag Warning 8: Increased Interest Rate On Default. Do you have a loan that includes a provision that increases the loan's interest rate upon default? ***If your answer is yes, your lender may be engaging in a predatory lending activity.***

9. Red Flag Warning 9: Improper Fees. Have you been charged fees for services that are not actually performed or charged loan discount points that do not reduce your interest rate? ***If your answer is yes, your lender or broker may be engaging in a predatory lending activity.***

10. Red Flag Warning 10: Failure To Provide Notice. Did you fail to receive a copy of this "Red Flag Warning Disclosure Notice" from your lender or broker at least 3 days prior to closing your loan? ***If your answer is yes, your lender or broker may have failed to timely send you a required disclosure notice in violation of the law.***

11. Red Flag Warning 11: Prepayment Penalty. Have you been charged a prepayment premium, fee or charge payable more than 3 years after the closing of your loan? ***If your answer is yes, your lender may be engaging in a predatory lending activity.***

12. Red Flag Warning 12: Balloon Payment. Do you have a loan with a scheduled balloon payment in less than 7 years? ***If your answer is yes, your lender may be engaging in a predatory lending activity.***

13. Red Flag Warning 13: Call Provision. Does your loan contain a provision that permits your lender to accelerate your debt? ***If your answer is yes, your lender may be engaging in a predatory lending activity.***

14. Red Flag Warning 14: Negative Amortization. Does your loan include a payment schedule with regular periodic payments that causes the principal balance to increase? ***If your answer is yes, your lender may be engaging in a predatory lending activity.***

15. Red Flag Warning 15: Advance Payment. Does your loan include terms under which your regular periodic payments required by your loan are paid in advance using proceeds from your loan? ***If your answer is yes, your lender may be engaging in a predatory lending activity.***

16. Red Flag Warning 16: Advance Waiver. Have you waived a violation of law with respect to any provision of your new loan in advance of finalizing your loan? ***If your answer is yes, your lender may be imposing an advance waiver provision on you in violation of the law.***

17. Red Flag Warning 17: Oppressive Mandatory Arbitration. Does your new home loan contain any oppressive mandatory arbitration clauses? ***If your answer is yes, your lender may be engaging in a predatory lending activity.***

18. Red Flag Warning 18: Homeownership Counseling. Has your lender failed to inform you of your right to obtain counseling in connection with your loan and failed to provide this notice to you within 3 days of the closing of your loan? ***If your answer is yes, your lender may be engaging in a predatory lending activity.***

REMEMBER

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FORECLOSE ON YOUR HOME!**

**IF YOU CANNOT OR DO NOT PAY THE MONTHLY
PAYMENTS ON TIME, YOUR HOME CAN BE SOLD AND YOU
COULD LOSE YOUR EQUITY IN YOUR HOME AND BE
EVICTED!**

Please sign below to acknowledge that you have received this notice and provide the date the lender or broker provided you with this notice:

I hereby certify that this form was delivered to me.

Signature

Name (Please Print)

Date

FORM 2

SAMPLE LETTER OF TRANSMITTAL

SUBMISSION OF LOAN DOCUMENTS TO THE DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS

S. Kathryn Allen
Commissioner
Department of Banking and Financial Institutions
1400 L Street, N.W., Suite 400
Washington, D.C. 20001

Dear Commissioner Allen:

Pursuant to section 221 of the Home Loan Protection Emergency Act and 26A DCMR §2008, I am submitting the attached loan documents for the following loan:

Name of borrower: _____

Address of property: _____

Lot and Square No. _____

Loan Identification No. _____

The attached loan documents include a copy of the settlement statement; the FP-7 Form filed with the Office of the Recorder of Deeds; the final Truth-in-Lending Act disclosure; and the note. I hereby certify that the attached documents are true copies of the original documents.

Thank you for your assistance.

Ann Jones,
Compliance Officer
ABC Mortgage Company
Anywhere City, Anywhere State Zipcode
Telephone #
Fax #
E-Mail address

FORM 3

NOTICE OF COVERED LOAN

REGARDING SALE OR ASSIGNMENT OF A COVERED LOAN

**THE ATTACHED LOAN HAS BEEN DETERMINED TO
BE A “COVERED LOAN” UNDER DISTRICT OF
COLUMBIA LAW**

**PLEASE NOTE THAT “COVERED LOANS” ARE ENTITLED
TO VARIOUS PROTECTIONS UNDER THE HOME LOAN
PROTECTION EMERGENCY ACT (ACT 14-295) (“ACT”) AND
ASSIGNEES MAY BE LIABLE UNDER THE ACT FOR
VIOLATIONS OF THE ACT.**

All persons interested in commenting on the subject matter of this proposed rulemaking shall file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments shall be filed with the Office of the General Counsel, Department of Banking and Financial Institutions, 1400 L Street, N.W., Suite 400, Washington, D.C. 20005. Copies of the proposed rules may be obtained from the Department at the same address.